

**EX PARTE filing
(requested)**

June 15, 2020

The Honorable Judge Bianco
U.S. District Court – EDNY
100 Federal Plaza
Central Islip, NY 11722

**Re: Conditions at MDC¹
(Preferably filed under seal)**

Your Honor,

I am writing following our June 10, 2020 conference call. The current conditions at MDC are almost indescribable in a **non**-third world country. I have attached summaries of: (1) a forensic audit of the pandemic conditions by the foremost medical expert in the field (and underlying references) (*Ex. A*); and (2) Judge Berman’s public proclamation about his intimate knowledge of the intolerable standards and “short-comings” at MDC (*Ex. B*).

- Please note that when “outside” individuals evaluate the facility, they are *always* on a “guided tour” of “selected” units and “maintained” areas. Notwithstanding, the recent evaluations take ones breath away – and they do not “live it”.

Please recall, for reference, that I have been detained two times in Mexican penal facilities at the hands of the people who actually stole from my investors and me (*ECF No. 667, government-forfeiture-36, government-forfeiture-44*). **I know deplorable conditions.** Both occurrences were “paid for” to frighten me from testifying on behalf of my investors versus: (i) Ken Jowdy, (ii) his NY Attorney Tom Harvey, (iii) the Lehman Brothers complicit officers [including Masood Bhatti]², and

¹ Public reports and postings by inmates of the **true conditions** at MDC have been met with retaliatory actions by staff. Considering the habitual denigration of me by staff (heavily documented over the 5-plus years at MDC), thru confirmed “outside” influences of my treatment, safety concerns dictate this is filed “**under seal**”. It is the defendant’s request to the Court for mercy.

² See *ECF No. 628 at 2*: [John Kaiser: February 28, 2019]: “*Jowdy also cries to the Court that the Government is interfering with his attempt to get Silverpeak Real Estate Partners to ‘invest’ in Diamante to help Kenner’s victims recover their investments. Jowdy didn’t tell the Court that Silverpeak is a company run by his close friend Masood Bhatti, or that Jowdy was paying Diamante funds to Silverpeak \$150,000 to \$200,000 every month to find ‘investors’ or ‘loans’ for Diamante. Jowdy didn’t tell the Court that Masood Bhatti has a ‘secret interest’ in Diamante.*”

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(iv) other ancillary Jowdy cabal members in Mexican criminal courts (including the two government star-witnesses, here). During my second “detention”, I was beaten within an inch of my life for exposing their diabolical scheme versus my Hawaii-Mexico investors and me – as a result of my defiant attitude, refusing to “*just go along*” with them in 2007.³ During the second kidnapping, I **refused** to sign over all of my assets to Jowdy (with the promise of safe release), bringing on harsher and harsher beatings (without food or water for the three-plus days in isolation). The “offer” echoed Attorney Harvey’s April 2009 emailed threat that he would be taking my equity away (thru litigation or otherwise at the hands of the FBI, SEC and NY Daily News slander stories) (*ECF No. 730, Exhibit 1*). One of our Mexico attorneys were murdered shortly after the District Federal Mexico Court ordered my “release” from the torture (thru an amparo).

MDC conditions (with relative perspectives)...

The facility implemented an in-unit lockdown on or about March 15; cancelling all outside visits, family and attorneys. On April 1, 2020, they implemented a 24/7 lockdown in the cells. The 24/7 in-cell lockdown continued for approximately 45 days, with 30 minutes initially granted for showers, phone and email access three days per week (assuming there were no “other issues” in the facility, a rarity). In or about mid-May the facility announced an extension to three hours per day (M-W-F), after several “*protests*” (typically multi-day hunger strikes) and punishment to the *leaders* (extended SHU time). But -- a few days later, an inmate died during a “protest” after staff fired a gun-triggered pepper spray into his locked cell resulting in his death from asphyxiation. The facility immediately went back to 24/7 lockdown. The staff was immediately armed with riot gear and heavily fortified with pepper spray weapons and team-tactic restraints. The facility armed the outside of the facility with 25-40 of similarly armed individuals, 24/7, and what appeared to be “tear gas” patrol on the roof of the two buildings, fearing the release of news of the

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- These “unannounced” consulting fees (at least to Kenner and Kenner investors) are what the government charged Kenner with as a criminal act, despite the confirmation by Hawaii COO Manfredi that he met with Constantine face-to-face before the consulting began (*Tr.3004*). The Constantine consulting engagement was **CONFIRMED** to the FBI in 2010 by Manfredi (*3500-CM-2-r at 1*) and Hawaii Managing Member (and turncoat), John Kaiser (*3500-JK-1-r at 5*).

³ The Court should heed notice that when John Kaiser and Bryan Berard were faced with the same “offer” thru Jowdy’s “*wining and dining*”, **they took it** and Kaiser, specifically, failed in his obligations as the Hawaii Managing Member. Now that Jowdy *used him up and fired him*, Kaiser told this Court, “*I am submitting this today because I see Jowdy has once again started a campaign of wining and dining people who didn’t know all the facts to say what a great guy he is.*” (*ECF No. 628 at 4*).

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“death” to the public, and public backlash (at or above the January-February 2019 protests for the subhuman conditions from the power outage). All communication to the “outside” was terminated by the facility. On June 8, 2020, the facility returned to the prior three-hour program (M-F) (with several disruptions already in the first week, to date). Water in the cells has more often than not been “brown” from the tap during the lockdowns; the only source of water for the inmates.

The general despair and moral in the building as a whole (as reported by officers) is *critically low*. Approximately two weeks ago, an inmate took his own life under the hopeless conditions. Neither the suicide nor the first coronavirus death from MDC has ever been announced publically. The coronavirus death was listed as “pneumonia” (also reported by an officer who was first-hand familiar with the inmate). *The death was reported as one of the inmates no longer exhibiting symptoms at the facility; technically it was factually accurate reporting (so kudos).*

The officers are ill-equipped to handle their tasks during this pandemic. More than 50% of the time, they are without masks, and 98% of the time without gloves. The staff is working heavy overtime shifts and appear completely exhausted (like walking zombies), contributing to the lack of resources and care.

None of this is humane (for staff or inmates), but it is apparent that MDC does not have the tools available to provide a safe environment. CDC standards are not followed. Sick-calls are ignored because staff is lacking. There is no maintenance of the repeated “paper” sick-calls that were the only reporting standard during the months of 24/7 lock-in. **Officers have reported the “paper sick-calls” are being destroyed**, in lieu of adding them to the inmate files, **to hide the facility’s inability to provide adequate response and care**. Many staff members are “trying” but while incapable to deliver adequate safety standards, for they are simply victims from a different perspective.

No testing has been done in the units, although after I filed an emergency paper sick-call with pneumonia-like symptoms (et.al.), a nurse came to take my temperature after 4 days (all of which I was constrained to my bed with breathing complications, severe headaches, and loss of smell). My respiratory issues have not returned to normal since.

The cleaning supplies are non-existent for the cells. Most cells house two inmates (like mine). Since March 15th, we have received (three times) a tablespoon of Comet in an envelope to clean the rooms (which includes the shared toilet, less

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than 24 inches from the bunk beds). The ventilation system has been set below 60 degrees almost exclusively. Any relief thru warmth has been absent.

The facility was placed on *reduced commissary* since the April lockdown. Only bare necessities are available under the limits. As such, it is not possible to prepare extra (and much needed) food for caloric intake. Vitamins and other personal hygiene products are limited as a result of the commissary reduction. After the recent “death” (and 24/7 lockdown implementation), the facility *cancelled* the current commissary (one month and counting at this point). All inmates’ inventory for food, personal hygiene, and OTC medicines are bare. There is no announcement when it will resume.

Despair is abundant.

If you recall the famous Indiana Jones scene when an Arab sword-wielding villain stopped Indian Jones and performed a pre-killing ritual with his swords (via dance), it was terminated when Indiana Jones pulled out his pistol and shot the man dead; well, MDC and its operations staff are fighting the global pandemic, its residual issues, and the unintended consequences with a proverbial “pea shooter”. There is no possible help with infection symptoms running amok and untreated for the many.

I am available for any follow-up questions. I hope the Court understands that these hyper-stressful conditions (with death in the air) are similar in hopelessness to the January-February 2019 “power outage” of eight (8) days locked in our cells without heat, light or even warm meals; while the facility leader *lied* to the public about the safety levels of the inmates. I prayed to G-d to die in my sleep at that time (January 2019 after a few days), so I would not freeze to death in the single-digit room temperatures while cruelly trembling all waking hours. Now, I expect to.

I remain, beaten by the system and despondent (over 1800 days since trial), while respectfully yours,

Phil Kenner
June 15, 2020